

**City of Chattanooga  
Enforcement Response Plan  
MS4 NPDES Permit TNS068063**



**December 2013**

<b>Authorized By:</b>	<b>Revision</b>	<b>Date</b>
<i>Mounir Y. Minkara, Ph.D., P.E.</i>		<i>June 1, 2012</i>
	<i>1</i>	<i>February 5, 2013</i>
	<i>2</i>	<i>December 10, 2013</i>

*Water Quality Manager  
Water Quality Management  
City of Chattanooga-Engineering  
Department of Public Works*

*1250 Market Street, Suite 2100  
Development Resource Center  
Chattanooga, TN 37402-2713*

*Phone (423) 643-5867  
Fax (423) 643-5862  
ChattanoogaWQ@chattanooga.gov*

## ***APPROVALS AND CONCURRENCES***

***Approvals:***      *This is to certify that we have reviewed this document and approve of its contents.*

\_\_\_\_\_  
*Signature*

***Mounir Y. Minkara, Ph.D., P.E.  
Water Quality Manager***

\_\_\_\_\_  
*Date*

## **Table of Contents**

Section 1. Introduction:.....	6
Section 2. Administrative Authority: .....	6
Section 2.1. Right of Entry: .....	6
Section 2.2. Compatibility with other Permit and Ordinance Requirements: .....	7
Section 2.3. Interdepartmental Cooperation: .....	7
Section 3. Definitions: .....	7
Section 4. Prohibition of Illicit Discharges:.....	10
Section 4.1. Limitation of Sanitary Sewer Seepage:.....	12
Section 4.2 Sewer Lateral Assessment Program (SLAP) Enforcement Response Procedures:.....	12
Section 4.3. Hot Areas: .....	14
Section 4.4. Construction/Grading Activities: .....	14
Section 4.5. Industrial and Commercial:.....	14
Section 5. Public Reporting: .....	16
Section 6. Types of Enforcement Actions: .....	16
Section 6.1. Insignificant vs. Significant Violations:.....	17
Section 6.2. Enforcement Protocol: .....	18
Section 7. Investigation Response Schedule:.....	21
Section 8. Private Stormwater Response Procedures:.....	21

## **List of Tables**

Table 1. List of Revisions .....	5
Table 2. City of Chattanooga’s Water Quality Penalty Assessment Matrix	

**Table 1. List of Revisions**

<b>Date</b>	<b>Specific Section or Page</b>	<b>Revision Type (major or minor)</b>	<b>Revision Description</b>
2/4/13	Sec. 1. Introduction	Minor	Replaced “to the regulated” with “into the”
2/4/13	Sec. 1. Introduction	Minor	Replaced “aids” with “serves”
2/4/13	Sec. 1. Introduction	Minor	“:” added after limitation
2/4/13	Sec. 2.1. Right of Entry	Minor	Added comma after Manager
2/4/13	Sec. 4.1. Limitation of Sanitary Sewer Seepage	Minor	Added comma after service line, replaced “to” with “including”
2/4/13	Sec. 4.1 Limitation of Sanitary Sewer Seepage	Major	Removal of item: “E. The Water Quality Management Plan “the Plan” will describes program elements, such as Field Screening, Stream Corridor Evaluation (SCORE) and the Sanitary Lateral Assessment Program (SLAP), specifically intended to identify and eliminate sources of sanitary wastes and Inflow and Infiltration.”
2/4/13	Sec. 4.2 Sewer Lateral Assessment Program (SLAP) Enforcement Response Procedures	Minor	Introduction to program element.
2/4/13	Sec. 4.2 Sewer Lateral Assessment Program (SLAP) Enforcement Response Procedures	Major	Time limit for submittal of appropriate paperwork of 14 days added to all SLAP applications with active sanitary discharges.

2/4/13	Sec. 7 Noncompliance Response Procedures:	Minor	Title changed to: Section 7. Investigation Response Schedule:
2/4/13	Sec. 7 Investigation Response Schedule	Minor	Language revision.
2/4/13	Appendix A	Major	Insertion of penalty assessment matrix
2/4/13	Appendix B	Major	Insertion of inspection/enforcement forms
12/10/13	Sec. 2.3 Interdepartmental Cooperation	Minor	Removed "... and Parks and Recreation"
12/10/13	Sec. 6.2 Enforcement Protocol	Major	Maximum penalties increased to \$5,000.00 per day of violation
12/10/13	Appendix A	Major	Maximum penalties increased to \$5,000.00 per day of violation

## **Section 1. Introduction:**

The purpose of this document (Enforcement Response Plan – ERP) is to provide for the health, safety, and general welfare of the citizens of the City of Chattanooga through the regulation of non-stormwater discharges into the municipal separate storm sewer system (MS4). This document further serves to maintain and improve the quality of the community waters into which stormwater outfalls flow; including without limitation: the lakes, rivers, streams, ponds, wetlands, sinkholes and groundwater of Chattanooga through consistent, timely, fair and equitable enforcement procedures.

This document establishes methods for controlling the introduction of pollutants into the MS4 or community waters. The objectives of this document are:

- A. To regulate the contribution of pollutants to the regulated municipal separate storm sewer system (MS4) and community waters.
- B. To prohibit illicit connections and discharges to the regulated municipal separate storm sewer system and community waters.
- C. To establish legal authority to carry out all inspection, surveillance and enforcement procedures necessary to ensure compliance with this document.

## **Section 2. Administrative Authority:**

This document shall apply to all water or pollutants entering the (MS4) and community waters on any developed or undeveloped lands unless exempted by the Tennessee Department of Tennessee or Environmental Protection Agency. Additionally, this document is adopted pursuant to authority conferred by the State of Tennessee Water Pollution Control Law, *Chapter 68, Sections 221-1106*, City of Chattanooga Code 31, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.

The Manager of Water Quality (hereinafter the “the Manager”) of the City of Chattanooga Water Quality Program is hereby authorized and designated as the official responsible for the enforcement and administration of this document. The Manager may designate employees within the Water Quality Administration to enforce on his/her behalf.

### **Section 2.1. Right of Entry:**

The Manager, or his designee, bearing proper credentials and identification, may enter and inspect all properties for regular periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of the ERP and the Water Quality Management Program. The Manager, or his designee, shall duly notify the owner

of said property or the representative on site and the inspection shall be conducted at reasonable times.

In the event that the Manager, or his designee, reasonably believes that discharges from the property into the MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

## **Section 2.2. Compatibility with other Permit and Ordinance Requirements:**

This document is not intended to interfere with, abrogate, or annul any ordinance, rule or regulation, statute, or other provision of the law. The requirements of this document should be considered minimum requirements, and where any provision of this document imposes, restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence. This document is intended to comply with the requirements of the City's National Pollutant Discharge Elimination System permit (Permit No. TNS068063).

## **Section 2.3. Interdepartmental Cooperation:**

Interdepartmental cooperation is essential to the effective implementation of the City's NPDES Permit. Memorandum's of Understanding (MOUs) have been signed between the Water Quality Management Program and the, Land Development Office, Chattanooga Fire Department Chattanooga-Hamilton County Air Pollution Control Bureau, Waste Resources Division, City Wide Services, and Parks and Recreation.

The primary function of the MOUs are to cultivate interdepartmental cooperation necessary to minimize the impacts of spills (emergency releases), sanitary sewer seepage, construction discharges, unauthorized industrial discharges, and illicit discharges to the MS4.

## **Section 3. Definitions:**

This section provides definitions for the terms and phrases used in this document and shall correspond to definitions stipulated in the City's NPDES Permit No. TNS068063 and City Code Article VIII, Section 31-302.

**Abatement** means any action taken to remedy, correct or eliminate a condition within, associated with, or impacting a drainage system.

***Accidental Discharge*** means a discharge prohibited by this article into the “Community Waters” or to the “Waters of the State” or to the City’s drainage system, which occurs by chance and without planning or consideration prior to occurrence.

***Best Management Practices (BMPs)*** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

***Clean Water Act (CWA)*** means the Federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972), as amended in Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S. C. 1251 et. seq.

***Community Waters*** means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of Chattanooga the waters into which the Chattanooga Stormwater System outfalls flow.

***Discharge*** means used without a qualifier, refers to “discharge of a pollutant” as defined at 40 CFR §122.2.

***Discharge-Related Activities*** include: activities which cause, contribute to, or result in stormwater point source pollutant discharges; and measures to control stormwater discharges, including the site, construction and operation of best management practices (BMPs) to control, reduce or prevent stormwater pollution.

***Division*** means the Tennessee Department of Environment and Conservation, Division of Water Pollution Control.

***Enforcement Response Plan (ERP)*** is a matrix of enforcement action to be taken for noncompliance incidents. Permittees are required to include in their ordinance or other regulatory mechanism, penalty provisions to ensure compliance with construction requirements, to require the removal of illicit discharges, and to address noncompliance with post-construction requirements.

***Hot Area*** means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Examples might include operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas and restaurants.

***Illicit Connection*** means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.



***Illicit Discharge*** is defined at 40 CFR §122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.

***Municipal Separate Storm Sewer System (MS4)*** is defined at 40 CFR §122.26 and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains).

- Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the state;
- Designed or used for collecting or conveying stormwater;
- Which is not a combined sewer; and
- Which is not a part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

***National Pollution Discharge Elimination System (NPDES)*** permit means a permit issued pursuant to Section 402 of the Act (33 U.S.C. §1342).

***Non-Stormwater Discharge*** means any discharge to the MS4 that is not composed entirely of stormwater.

***Person*** means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

***Point Source*** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

***Pollution*** means any contamination or other alteration of the physical, chemical, or biological properties of Waters of the United States/Community Waters; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any Community Waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety and

welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

**Stormwater** is defined by 40 CFR § 122.26(b)(13) and means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

**Stormwater System** means all facilities owned or maintained by the City for collecting, detaining, conveying, or treating stormwater from any parcel or place upstream or up gradient of any point discharge to a river or creek not maintained by the City for conveyance of stormwater or flood control.

**Waters of the State** are simply Waters is defined in the Tennessee Water Quality Control Act and means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine to effect a junction with natural surface or underground waters.

**Water Quality Buffer** means a setback from the top of the water body's bank of undisturbed vegetation; including trees, shrubs and herbaceous vegetation: enhanced or restored vegetation: or the reestablishment of native vegetation bordering streams, ponds, wetlands, springs, reservoirs or lakes, which exists or is established to protect those water bodies. The goal of the water quality buffer is to preserve undisturbed vegetation that is native to the streamside habitat in the area of the project.

Vegetated, preferably native, water quality buffers protect water bodies by providing structural integrity and canopy cover, as well as stormwater infiltration, filtration and evapotranspiration. Buffer width depends on the size of a drainage area. Streams or other waters with drainage areas less than 1 square mile will require buffer widths of 30 feet minimum. Streams or other waters with drainage areas greater than 1 square mile will require buffer widths of 60 feet minimum. The 60-foot criterion for the width of the buffer zone can be established on an average width basis at the project, as long as the minimum width of the buffer zone is more than 30 feet at any measurable location. The MS4 must develop and apply criteria for determining the circumstances under which these averages will be available. A determination that standards cannot be met may not be based solely on the difficulty or cost associated with implementation.

#### **Section 4. Prohibition of Illicit Discharges:**

For the purpose of this document, the term "illicit discharge", is defined "as any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater, except for discharges allowed under an NPDES permit ..... These non-stormwater discharges occur due to illegal connections to the storm drain system from commercial/residential establishments. As a result of these illicit connections, contaminated wastewater enters into storm drains or directly into local waterways without receiving treatment from a wastewater treatment plant."

With the exception of authorized non-stormwater discharges, no person shall discharge, or cause to be discharged, into the MS4 or community waters, including but not limited to pollutants or waters containing any pollutants other than stormwater. The list of authorized non-stormwater discharges include:

- Water line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground water
- Uncontaminated ground water infiltration (infiltrating is defined as water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow)
- Uncontaminated pumped ground water
- Discharges from potable water sources
- Air conditioning condensate
- Irrigation water
- Springs
- Water from crawl space pumps
- Footing drains
- Lawn watering
- Individual residential car washing
- Flows from riparian habitats and wetlands
- Dechlorinated swimming pool discharges
- Street wash water
- Discharges or flows from fire fighting activities

The following direct or indirect discharges into the MS4 or community waters are prohibited and a violation of City Code (Ord. 9942, Sec. 31-341)

- Sewage dumping or dumping of sewage sludge
- Chlorinated swimming pool discharge
- Discharge of any polluted household wastewater, such as but not limited to laundry washwater and dishwater, except to sanitary sewer or septic system
- Leaking sanitary sewers and connections
- Leaking water lines
- Commercial, industrial or public vehicle wash discharge
- Garbage or sanitary waste disposal
- Dead animals or animal fecal waste
- No non-stormwater discharges shall be discharged into “Community Waters”, except pursuant to a permit issued by the State or City
- No dredged or spoil material shall be directly or indirectly discharged into “Community Waters”
- No solid waste shall be directly or indirectly discharged into the MS4 or “Community Waters”

- No chemical waste shall be directly or indirectly discharged or discarded into “Community Waters”
- No wrecked or discarded vehicles or equipment shall be discharged or discarded into “Community Waters”.

#### **Section 4.1. Limitation of Sanitary Sewer Seepage:**

A. The construction, use, maintenance or continued existence of illicit connections to the MS4 system or “Community Waters” is prohibited.

B. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. All repairs and maintenance of the sanitary sewer service line, including correction of excessive inflow and infiltration, shall be the responsibility of the property owner or user of the sewer. The city shall be responsible for the maintenance of collector lines and interceptor lines up to the point where the owner’s service line connects to the city’s line (Ord. 9942, Sec. 31-4).

D. No stormwater, groundwater, rain water, street drainage, rooftop drainage, basement drainage, subsurface drainage, foundation drainage, yard drainage, cooling water, process water discharge, or other unpolluted water shall be discharged to the city’s sanitary sewer system unless no other reasonable alternative is available, and then no such water shall be discharged to the city’s sanitary sewer system except upon permission by the superintendent ....All users shall be required to maintain their private sewer lines so as to prevent infiltration of ground or stormwater as a condition of use of the system and shall immediately repair or replace any leaking or damaged lines (Ord. No 9409, Sec 6-5-90; Ord. No 12023, Sec 4, 10-2-07).

#### **Section 4.2 Sewer Lateral Assessment Program (SLAP) Enforcement Response Procedures:**

As part of the City’s on-going program to identify and eliminate illicit discharges and inflow and infiltration into the sanitary sewer system, the sewer lateral assessment program (SLAP) was developed. SLAP is a mechanism by which the City actively inspects both the public and private sanitary sewer system and initiates enforcement action based on the hierarchy of discovery.

*Each type of enforcement letter is assigned a grace period, within which property owners must have repairs made to faulty sewer lines.*

**Notification Letters:** (1<sup>st</sup> phase of enforcement; 30 day grace period)

Notification letters should be sent within three (3) weeks of the day smoke testing was conducted.

The letters should be divided into two (2) groups: property owners and rental properties.

In the case the Notification letter is returned, property ownership should be confirmed with both Hamilton County and City records. If the property ownership information WQ has is correct, one (1) certified letter and one (1) non-certified letter of the same content will be sent. If the certified letter OR the non-certified letter is returned, but not both, enforcement will resume and a Warning letter should be sent.

If both the certified letter AND the non-certified letter are returned, and all other avenues (contact via e-mail, phone, etc.) are exhausted, enforcement will cease and the case will be closed.

**Warning Letters:** (2<sup>nd</sup> phase of enforcement; 10 day grace period)

Warning letters should be sent no sooner than 30 days, and no later than 55 days, after the Notification letters. Warning letters should be sent as Certified Mail.

In the case the Warning letter is returned, property ownership should be confirmed with both Hamilton County and City records. If the property ownership information WQ has is correct, one (1) certified letter and one (1) non-certified letter of the same content will be sent. If the certified letter OR the non-certified letter is returned, but not both, enforcement will resume and a Notice of Violation should be sent.

If both the certified letter AND the non-certified letter are returned, and all other avenues (contact via e-mail, phone, etc.) are exhausted, enforcement will cease and the case will be closed.

**Notification of Violation (NOV):** (3<sup>rd</sup> phase of enforcement; 7 day grace period)

The Water Quality staff shall wait until 5 days, but no later than 15 days, after a compliance meeting (referenced in the Warning letter) has been held to send a Notification of Violation (NOV). All NOV letters should be Certified Mail.

In the case the NOV is returned, property ownership should be confirmed with both Hamilton County and City records. If the property ownership information WQ has is correct, one (1) certified letter and one (1) non-certified letter of the same content will be sent. If the certified letter OR the non-certified letter is returned, but not both, enforcement will resume and a Compliance Letter should be sent.

If both the certified letter AND the non-certified letter are returned, and all other avenues (contact via e-mail, phone, etc.) are exhausted, enforcement will cease and the case will be closed.

**Compliance Letter/Order:** (4<sup>th</sup> phase of enforcement; 14 day grace period)

If the Certified NOV has not been returned, a Compliance Order should be mailed immediately after a spot smoke test has been done and within eight (8) weeks of a scheduled court date. All Compliance Orders should be Certified mail. The Water Quality team shall have, at this time, attempted to contact the home owners by mail and phone. In addition, the Water Quality team shall have at this time re-smoked the property to make sure that the anomalies have not been repaired.

In the event of active sanitary discharge, home owners may apply for financial assistance for repairs through the SLAP program. All necessary paperwork to evaluate eligibility for the SLAP assistance program must be submitted (in full) within fourteen days of the time the property owner receives the application.

#### **Section 4.3. Hot Areas:**

The City has identified areas in the city where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. For example, operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas and restaurants. The City will focus education and outreach efforts in these areas.

A tracking mechanism (survey) will be used to determine change in practices and attitudes within these areas. The City is sending education letters and brochures to selected hot areas.

#### **Section 4.4. Construction/Grading Activities:**

When applicable, all land disturbing activities shall apply for a Land Disturbing Permit to the City's Land Development Office (LDO) (Ord. No. 9942, § 1, 8-31-93). Additionally, timber removal activities are regulated through LDO and enforcement guidelines are applicable.

#### **Section 4.5. Industrial and Commercial:**

The City's Water Quality Program conducts planned inspection on NPDES permitted sites in the City, and responds to complaints for commercial, NPDES, and non-NPDES covered establishments. There are a number of practices, activities, maintenance issues and procedures that have been identified as important. Below is a list of practices that have been identified as that could trigger compliance and enforcement issues, but are not limited to:

1. Uncovered Dumpsters
2. Any discharge of pollutants on or off site
3. Erosion associated with an outfall or other areas that could potentially discharge sediment to waters of the state.
4. Outside Storage of Liquid Containers (drums, totes, and smaller containers)
5. Outside Storage of Materials

6. Fueling tank without secondary containment or compromised containment area with cracks or holes in the containment.
7. Housekeeping Measures
  - Facilities with heavy vehicle traffic that generate dust accumulation are required to perform daily sweeping (mechanical/non-mechanical sweeping).
  - Industrial facilities with NPDES permits are required to adhere to guidelines for housekeeping measures outlined in the SWPPP. Sites, industrial or commercial that do not have a NPDES permit which has trash, tires, or other debris on site, or released, dumped, off site, can be required to perform maintenance activities to rectify the problems.
  - Facilities with activities that generate paper residuals are required to perform daily sweeping (mechanical/non-mechanical sweeping). Such facilities include but are not limited to:
    - Printing Operations
    - Paper Recycling Operations
    - Cardboard Bailing Operations
8. Structural Best Management Practice (Ponds, Oil skimmers, water quality units, etc.) – BMPs Maintenance
  - Facilities with BMPs are requested to perform quarterly visual inspections to insure that the structural device is performing at optimal design.
  - Upon inspection, proper BMP maintenance shall be conducted.
  - Keep log of all your BMPs inspection and maintenance schedule and activities.

***Retention/Detention Pond maintenance requirements (but are not limited to)***

- Vegetation such as weeds, trees, bushes, or other vegetation, that were not listed on a landscape plan or final design of the structures, shall be removed.
- The structure must be brought back to the final design per post-construction plans or standards in City approved Maintenance manual.
- Any orifice, inflow or out flow, must be free and clear.
- The structure must be stable and not a source of sediment or other pollutants.

***Oil skimmers, water quality units***

- Water quality units are required to be maintained per manufacture's requirements or by approved maintenance plan submitted to the City, so they are not sources of pollutants.
- Oil skimmers are to be serviced by a vacuum truck when they have sediment build-up of 4 inches or above, or has an unacceptable oil deposit.

9. Spill Reporting and Remediating

- Any facility that has a spill of reportable quantity is required to report the spill to City of Chattanooga's Water Quality Program.
  - Gasoline and Diesel: 1
  - Sewage: Any Amount
  - Paint:
  - Chemicals (Acids)

## **Section 5. Public Reporting:**

In 2003, the City launched the Citizen Service Request 311 system. The 311 system is a city-wide (interdepartmental) system that gives the citizenry a mechanism to access city services and report suspected illicit discharges. The 311 system provides a performance measurement tool to track and document activities associated with illicit discharge complaint response. Timeframe for complaint investigation is as follows:

- Service Requests are created using any one of the following Service Request Types
  - *Construction Erosion*
  - *Detention Pond Inspection*
  - *Industrial Inspection*
  - *Environmental Review*
  - *Inquiry Water Quality*
  - *INT Land Disturbing Permit*
  - *Land Disturbing Permit Inquiry*
  - *Spill/Chemical Discharge*
  - *Water Pollution*
  - *Water Quality/Credit Application*
  - *Water Quality/Follow-up*
  - *Water Quality General*
- Service Requests are assigned an inspector
- Inspector has three (3) working days to conduct inspection

## **Section 6. Types of Enforcement Actions:**

This document contains detailed procedures identifying how the City of Chattanooga Water Quality Program will investigate and respond to instances of non-compliance. Types of enforcement actions are based on severity and recurrence of violation. Enforcement actions include:

- Verbal Warning,
- Notification Letter,
- Written Warning,
- Notice of Violation,
- Consent Order,
- Show Cause Hearing,



- Compliance Order or Cease and Desist Order,
- Civil Penalties can also be issued up to \$5,000 per day for each day during which the act or omission continues to occur.
- Request for Property Condemnation

### **Section 6.1. Insignificant vs. Significant Violations:**

Insignificant (minor) violations consist of minor non-stormwater discharges into the MS4. Examples of insignificant violations include:

- Improper disposal of grass clippings or leaves
- Improper disposal of pet waste
- Improper maintenance of private automobiles
- Non-discharging anomalies discovered during smoke testing
- Pressure washing activities

Insignificant (minor) violations will be addressed through educational avenues. Notification letters will be sent to all parties (i.e.: neighborhoods, residence where smoke appears, etc.) in which an insignificant violation has been identified. Included with the notification letter will be educational information and links to additional contact resources.

Significant violations constitute a more advanced enforcement action. Administrative enforcement actions can include:

**Written Warning:** In instances where enforcement is necessary, but the violation does not merit a Notice of Violation, the Manager may serve a Written Warning. The Written Warning should specify the level of violation and provide mitigation remedies.

**Notice of Violation (NOV):** Whenever the Manager finds that any permittee or any person discharging stormwater has violated, or is violating, any portion of the MS4 permit, the Manager or his agent may serve upon said user written notice of the violation. The NOV should be issued within five (5) working days of the identification of the violation. A NOV may contain assessment of penalties or cost of recovery. The NOV generally provides the recipient with an opportunity to correct the noncompliance on its own initiative rather than according to a schedule of actions determined by the Manager. The NOV documents the initial attempts of the City to resolve noncompliance. The NOV may serve as evidence in judicial proceedings.

**Consent Orders:** The Manager is empowered to enter into consent order, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the non-compliance. Such orders will include specific action to be taken by the violator to correct the non-compliance within a time period specified by the order.

**Show Cause Hearing:** The Manager may order any person who causes or contributes to violation of the MS4 permit to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting the

proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken.

**Compliance Order:** When the Manager finds that any person has violated or continues to violate the MS4 permit, he may issue an order to violator directing that, following a specified time period, adequate structures, devices, be installed or procedures implemented and properly operated. Orders may also contain additional requirements that might be necessary and appropriate to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.

**Cease and Desist Orders:** When the Manager finds that any person has violated or continues to violate the MS4 permit, the Manager may issue an order to cease and desist all such violations resulting in non-compliance (Ord. No. 9942 § 1,8-31-93).

## **Section 6.2. Enforcement Protocol:**

- **Land Disturbing Activities Without Obtaining Necessary Land Disturbing Permit**
  - First Offense (Contractor)—Cease and Desist Order; Notice of Violation; Civil Penalty for Cost of Permit.
  - Second Offense (Contractor)—Cease and Desist Order, Issuance of Civil Penalty up to \$5,000.00 plus damages consisting of cost of permit and City expenses for enforcement of article.
  - Each Additional Offense (Contractor)—Cease and Desist Order; Issuance of Civil Penalty up to \$5,000.00 plus damages plus court citation for Unlawful Acts, Misdemeanor.
  - Failure to Properly Transfer Land Disturbing Permit—Issuance of Civil Penalty for the cost of new permit.
  - Failure to Request Extension of Permit—Issuance of Civil Penalty for the cost of new permit
  - Enforcement under this guidance is contractor specific, not site specific. For instance, if contractor A receives a Notice of Violation for a first offense, a Civil Penalty is to be issued against Contractor A for the second offense regardless of the property owner or location. Additional penalties are possible if there is a pattern of negligence among multiple sites.
- **Failure to Install, Maintain or Use Proper Construction Entrance (Tracking Mud on Street)**
  - First Offense—Written Warning Issued to Land Disturbing Permit Applicant. Copies to General Contractor.
  - Second Offense—Notice of Violation issued to Land Disturbing Permit Applicant.
  - Each Additional Offense—Issuance of Civil Penalty against Land Disturbing Permit Applicant of up to \$5,000.00 per day plus City expense for enforcement of article.

- Failure of the applicant to actively remove any mud, debris or construction material that is deposited in a public roadway will lead to an additional civil penalty of up to \$5,000.00 per incident plus City expense for enforcement of article plus three times the cost of the City expenses if City crews are required to remove it to protect the safety of the public. *Actively is defined as the continuous and/or immediate use of labor, equipment and or material to remove mud deposited on public streets and/or prevent the deposition by on-site control measures at such times when site conditions may be conducive to tracking. This includes, but is not limited to, proper utilization of construction exits; proper maintenance, including necessary extensions; use of manual labor, power sweepers or appropriately designed truck tire wash facilities; etc. Power washing of streets without collection and treatment of wash water is not acceptable.*
- **Failure to Install, Maintain or Use Proper Structural Erosion or Sediment Controls (Sediment Discharge)**
  - First Project Offense—Written Warning issued to Land Disturbing Permit Applicant. If project is exempt from obtaining a land disturbing permit, written warning is given to the property owner. Issuance of Civil Penalty for cost of damages for City expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.
  - Second Offense—Notice of Violation issued to Land Disturbing Permit Applicant and Property Owner; Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained; Compliance Order to Submit Self-Inspection Documentation on Monthly Basis; Permit Exempt projects required to obtain Land Disturbing Permit. Issuance of Civil Penalty for cost of damages of twice the cost of City expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures.
  - Third Offense-- Issuance of Civil Penalty of up to \$5,000.00 per discharge point per discharge plus City expense for enforcement of article to be levied to land disturbance permit applicant. Damages of up to three times the cost of City expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
  - Each Additional Offense-- Issuance of Civil Penalty of up to \$5,000.00 per discharge point per discharge to be levied to the land disturbance permit applicant. Damages of up to three times the cost of City expenses if City crews are required to clean up sediment discharged into City Streets, right-of-way or stormwater structures. Cease and Desist Order until necessary erosion and sedimentation controls are installed or maintained.
- **Failure to Properly Maintain Erosion Control Self Inspection Sheets and On-Site Erosion Control Plan**
  - First Project Offense—Written Warning issued to Land Disturbing Permit Applicant.

- Second Offense—Issuance of Civil Penalty of up to \$5,000.00 per inspection in which either self inspection sheets or up-to-date erosion control plans cannot be provided when asked for by the inspector.
- **Failure to Provide Proper Final Stabilization**
  - First Offense—Written Warning issued to Land Disturbing Permit Applicant.
  - Second Offense—Issuance of flat rate Civil Penalty of \$50.00 if site remains unstable for longer than 7 consecutive days past the issuance date of final certificate of occupancy. An additional graduated penalty of \$25.00 per disturbed acre per day, up to \$5,000.00 per day .
  -
- **Failure to Comply with Approved Stormwater Design Plans**
  - Upon Notice of Variation of Approved Plans—Written notification to Design Engineer, General Contractor and Land Disturbing Permit Applicant that construction does not match approved plans and that if modifications are to be made, revised plans must be submitted for review and approval.
  - Failure to Submit Revised Plans—Stormwater Inspectors cannot authorize approval for certificate of occupancy until modifications have been submitted and approved.
  - Failure to Implement Approved Stormwater Design Plan (Previously Occupied)
    - Notice of Violation and Compliance Order—A Notice of Violation and Compliance Order shall be issued to the property owner giving a maximum of thirty days to install all required stormwater infrastructure
    - Failure to Meet Compliance Order Dates—Issuance of Civil Penalty of up to \$5,000.00 per day for each day approved plans are not met.
- **Illicit Discharges (Non-residential, Non-accidental)**
  - First Offense—Depending on the level of severity either a Written Warning or Notice of Violation issued to responsible party for non-stormwater discharge.
  - Second Offense—Issuance of Civil Penalty against responsible party of up to \$5,000.00.
  - Each Additional Offense—Issuance of Civil Penalty against responsible party of up to \$5,000.00.
  - Additional damages consisting of City expenses for *monitoring, sampling*, enforcement and the cost of City expenses or contracted services to clean up illicit discharge will be passed on to violator starting with the first offense. Additional damages to include other items such as loss of income for not properly using sanitary sewer system.
  - An Illicit discharge properly reported as Accidental Discharges as required by Section 31-343 will be reclassified as Accidental Releases and not subject to enforcement as an illicit discharge. However, the responsible party may be held liable to damages to the City.
- **Illicit Discharges (Residential Wastewater Discharge)**
  - First Offense—Issuance of Notice of Violation and Compliance Order to stop illicit discharge within 10-days.

- Failure to comply with Compliance Order—Issuance of Court Citation for Unlawful Act, Misdemeanor. An additional request should be made to Neighborhood Services asking for condemnation of the residential unit.
- **Illicit Discharges (Residential Other than Wastewater Discharge)**
  - First Offense— Enforcement action based on individual action. Examples: Deliberate dumping of pesticide, used motor oil or other hazardous or dangerous chemical into storm drainage system would result in Issuance of Civil Penalty including damages, raking leaves into drainage system may result in written or verbal warning.

## **Section 7. Investigation Response Schedule:**

It is the responsibility of the Manager, or designee, to investigate all incidents (either reported by the public or discovered during inspection) to determine if a violation to City Code has occurred and if so, level of enforcement.

The time frames for responses are as follows:

- All Citizen Service Request (CSR) will be inspected within three (3) business days.
- Initial enforcement responses will occur within ten (10) working days of violation detection.
- Follow-up actions associated with enforcement will occur as needed to ensure compliance.
- Significant violations which immediately threaten public health, property, or the environment are considered emergencies and will receive immediate responses to halt the violation.

## **Section 8. Private Stormwater Response Procedures:**

Structural Best Management Practice (Ponds, Oil skimmers, water quality units, etc.) – BMPs Maintenance

- Facilities with BMPs are requested to perform quarterly visual inspections to insure that the structural device is performing at optimal design.
- Upon inspection, proper BMP maintenance shall be conducted.
- Keep log of all your BMPs inspection and maintenance schedule and activities.

### ***Retention/Detention Pond maintenance requirements (but are not limited to)***

- Vegetation such as weeds, trees, bushes, or other vegetation, that were not listed on a landscape plan or final design of the structures, shall be removed.
- The structure must be brought back to the final design per post-construction plans or standards in City approved Maintenance manual.

- Any orifice, inflow or out flow, must be free and clear.
- The structure must be stable and not a source of sediment or other pollutants.

#### **Oil skimmers, water quality units**

- Water quality units are required to be maintained per manufacture's requirements or by approved maintenance plan submitted to the City, so they are not sources of pollutants.
- Oil skimmers are to be serviced by a vacuum truck when they have sediment build-up of 4 inches or above, or has an unacceptable oil deposit.

#### **Green Infrastructure practices**

- Green infrastructure practices such as bio-filtration, grass swales, vegetative roofs, tree boxes or other permanent infiltration/water quality treatment practices shall be maintained per city approved Inspection and Maintenance plan or city Maintenance manual.
  - Sediment shall be removed from forebay, structure or media as soon as it has been identified.
  - Invasive plants shall be removed when identified.
  - Media shall be replaced when maintenance plan calls for or as needed.
  - When a structure has been identified that it is not functioning per design, it shall be repaired.
  - When length or width or slopes have changed from original design, the structure shall be repaired per original design or to approval of city Water Quality Manager.
  - Repair or replace any damage to the sod, vegetation, or evenness of grade when identified as out of specification of ordinal design. Look for signs of erosion, distressed vegetation or channelization of sheet flow.
  - Vegetation height and type shall be maintained per Inspection and Maintenance plan or city approved manual.
- Green roofs will be maintained per Inspection and Maintenance Plan:
  - Vegetation shall be replaced when necessary.
  - Roof shall be modified or replaced when it is not functioning per level of instillation, i.e. if it was install to hold the 1<sup>st</sup> inch of rainfall and it does not reach that level.
- The above practices shall be not become a source of sediment or other pollutants.

**Notification Letters:** (1<sup>st</sup> phase of enforcement)

To be in compliance with the City of Chattanooga Private Stormwater Response Procedures, property owners are required to complete the required maintenance stated in the Notification letter within 30 days of receipt of this letter.

**Warning Letters:** (2<sup>nd</sup> phase of enforcement)

After 30 days, if the city's WQP does not receive a response and/or the problems have not been rectified, a warning letter is sent. The property owner will have 14 days to comply. Warning letters should be sent as Certified Mail.

**Compliance Letter:** (3<sup>rd</sup> phase of enforcement)

After 14 days, if the city's WQP does not receive a response and/or the problems stated in the Warning Letter have not been rectified, a compliance letter will be sent. The property owner will have 10 days to comply. Compliance letters should be sent as Certified Mail.

# **Appendix A**

## **Penalty Assessment for Non-Compliance**



## **Penalties, Administrative or Civil**

Article VIII. Stormwater Management of the City of Chattanooga Code authorizes assessment of penalties up to five thousand dollars (\$5,000.00) per day for each day of violation (Sec. 31-346). If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended.

Penalty categories are determined by using the Enforcement Protocol as adopted November 18, 2004. All penalty assessments will be approved by the Manager or designee.

### **Explanation of Enforcement Matrix**

The primary purpose of the enforcement matrix is to guide the inspector and Manager through the appropriate types of enforcement actions. Issuances of civil penalties are based on a hierarchy determined by severity of violation and recurrence of violation.

**Category 0 = No Penalty**

**Category 1 = \$50.00 to \$1,000.00**

**Category 2 = \$1,000.00 to \$2,500.00**

**Category 3 = \$2,500.00 to \$5,000.00**

Assessments for damages or destruction to Publicly Owned properties, and any penalties, costs, and attorney's fees incurred by the Water Quality Program as the result of illegal activity, as well as expenses involved in enforcement, are not part of the penalty assessment procedure.

### **City of Chattanooga's Water Quality Penalty Assessment Matrix**

<b><u>Incident</u></b>	<b><u>Category Level</u></b>	<b><u>Action Taken</u></b>
<b>1. Land Disturbing Activity</b>		
<b>Without obtaining permits</b>		
A. First offense	0	NOV, Cease and Desist Order
B. Second offense	1	NOV, Cease and Desist Order, Possible court citation, penalty may be assessed.
C. Third offense	3	NOV, Cease and Desist Order, possible court citation, penalty may be assessed.

## City of Chattanooga's Water Quality Penalty Assessment Matrix

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
<b>2. Failure to Install, Maintain or use Proper Construction Entrance (Tracking Mud on Street)</b>		
A. First offense	0	Written Warning
B. Second offense	2	NOV, possible penalty in the amount of expenses incurred by the City for remediation.
C. Third offense (+)	3	NOV, penalty up to \$5,000 per day may be assessed.
<b>3. Failure to Install, Maintain or use Proper Structural Erosion or Sediment Controls (Sediment Discharge)</b>		
A. First offense	0	Written Warning
B. Second offense	1	NOV, possible penalty in the amount of expenses incurred by the City for remediation.
C. Third offense	2	Issuance of penalty up to \$2,500 per discharge point per discharge. Damages up to three times City's costs for remediation/enforcement.
E. Each additional offense	3	Issuance of penalty up to \$5,000 per discharge point per discharge. Damages up to three times City's cost for remediation/enforcement. Cease and desist order.

### City of Chattanooga's Water Quality Penalty Assessment Matrix

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
<b>4. Failure to Properly Maintain Erosion Control Self-Inspection Sheets and On-Site Erosion Control Plans</b>		
A. First offense	0	Written Warning
B. Second offense	1	May result in issuance of penalty up to \$1,000 per inspection.
<b>5. Failure to Provide Proper Final Stabilization</b>		
A. First offense	0	Written Warning
B. Second offense	3	May result in issuance of penalty Of \$5,000 per site remaining unstable 7 days or more.
<b>6. Failure to Comply with Approved Stormwater Design Plans</b>		
A. Upon notice of violation of Approved plans	0	Written Warning
B. Failure to submit revised plans	0	Non-issuance of Certificate of Occupancy.
C. Failure to implement approved Stormwater design plan (previously occupied)		
First offense	0	NOV and Compliance Order
Second offense	2	May result in issuance of penalty up to \$1000 per day of non-compliance.

## City of Chattanooga's Water Quality Penalty Assessment Matrix

<u>Incident</u>	<u>Category Level</u>	<u>Action Taken</u>
<b>7. Illicit Discharge (Non-residential, non-accidental)</b>		
A. First offense	0	NOV
B. Second offense	2	May result in issuance of penalty up to \$2,500.
C. Additional offenses	3	May result in issuance of penalty up to \$5,000 and/or reimbursement of City expenses incurred.
D. Accidental discharges	0	Responsible party may be held liable for damages to the City.
<b>8. Illicit Discharge (Residential Wastewater Discharge)</b>		
A. First offense	0	NOV and Compliance Order for repairs to be made within 10 days.
B. Non-Compliance or (+) Offenses	1	Court citation and possible condemnation.
<b>9. Illicit Discharge (Residential other than Wastewater Discharge)</b>		
A. First offense		Enforcement based on individual action.

# **Appendix B**

## **Inspection/Enforcement**

### **Action Forms**